

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Morton v. Unknown Heirs of Van Camp

654 S.E.2d 621 (W. Va. 2007) · No. No. 33341 · Decided November 28, 2007

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed an order directing the sale of jointly owned real property rather than partitioning it in kind. The court concluded that partition could not be conveniently made because the appellant's proposed parcel was the most valuable and the remaining land would require substantial development costs. A dissent argued that partition in kind remained the preferred method and that commissioners should have been appointed to assess its feasibility.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	November 28, 2007
DOCKET	No. 33341
DISPOSITION	affirmed
PROCEDURAL POSTURE	Linda Kessler Archer appealed a circuit court order directing the sale of jointly owned real property rather than partitioning it in kind.
STANDARD OF REVIEW	The final order and ultimate disposition following a bench trial are reviewed for abuse of discretion; underlying factual findings are reviewed for clear error; and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Linda Kessler Archer v. Bill E. Morton, Jess R. Morton, Unknown Heirs of Ernest M. Van Camp, Lilly Tucker, Unknown Heirs of Margaret Van Camp Price, Unknown Heirs of Dorothy Van Camp, Unknown Heirs of Helen Van Camp, Unknown Heirs of Violet Van Camp, Unknown Heirs of Martha Van Camp, Herbert Hopkins, Natalie Steele, Glenna May (Haynes) Dietz, Barbara Ann (Haynes) Gunnoe Young, Mary Lou (Haynes) Mason, Carolyn Ruth (Haynes) Melton, William Ronald Haynes, Charlotte Elizabeth (Haynes) Plantz, Unknown Heirs of Squire Van Camp

TOPICS

partition real estate appellate procedure standard of review civil procedure

PRACTICE AREAS

real estate partition appellate procedure civil procedure remedies

QUESTIONS PRESENTED

1. Whether the circuit court properly ordered partition by sale rather than partition in kind.
2. Whether the evidence established that the property could not be conveniently partitioned in kind and that sale would promote the interests of some owners without prejudicing the opposing owner.
3. Whether the circuit court committed reversible error in evaluating the evidence and applying West Virginia Code § 37-4-3.

HOLDINGS

1. The circuit court correctly determined that the real property could not be conveniently partitioned in kind because awarding Archer the 3.64-acre homesite would leave the other owners with substantially less valuable and difficult-to-develop land.
2. Partition by sale was proper because the property could not be conveniently partitioned, the sale would promote the interests of the owners holding six-sevenths of the property, and Archer would not be prejudiced because she would receive her one-seventh share of the sale proceeds.
3. A circuit court's final order and ultimate disposition after a bench trial are reviewed for abuse of discretion, factual findings for clear error, and legal questions de novo.

KEY QUOTATIONS

“Thus, since the property cannot be conveniently partitioned, the interests of the majority of the property owners will be promoted by a sale of the property and the interests of the appellant will not be prejudiced as she will receive one-seventh of the proceeds from that sale.” (654 S.E.2d at 625)

“The final order and the ultimate disposition are reviewed under an abuse of discretion standard, and the circuit court's underlying factual findings are reviewed under a clearly erroneous standard. Questions of law are subject to a de novo review.” (654 S.E.2d at 623)

FACTUAL BACKGROUND

The Mortons owned an undivided six-sevenths interest in 25.5 acres of undeveloped land, while Archer owned a one-seventh interest and lived on the property in a mobile home. The Mortons sought to develop the property, asserting that the only viable entrance ran through the portion occupied by Archer and that partitioning that portion would substantially impair development of the remainder. Evidence showed that the 3.64 acres requested by Archer was the most valuable and only readily developable portion, while development of the remaining acreage would require substantial excavation and road construction. Archer did not provide a survey identifying a feasible alternative site for her mobile home.

PROCEDURAL HISTORY

Bill E. Morton and Jess R. Morton filed a complaint in the Circuit Court of Kanawha County seeking sale of a 25.5-acre parcel. Archer opposed the sale and sought an in-kind partition that would allow her to remain on the property. After receiving testimony from the parties and real-estate appraisers, the circuit court ordered the property sold and directed distribution of proceeds according to ownership interests. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Public Citizen, Inc. v. First National Bank in Fairmont, 198 W. Va. 329, 480 S.E.2d 538 (1996)
- Ark Land Co. v. Harper, 215 W. Va. 331, 599 S.E.2d 754 (2004)
- Consolidated Gas Supply Corp. v. Riley, 161 W. Va. 782, 247 S.E.2d 712 (1978)
- Loudin v. Cunningham, 82 W. Va. 453, 96 S.E. 59 (1918)
- Roberts v. Coleman, 37 W. Va. 143, 16 S.E. 482 (1892)

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